

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

SAN LUIS & DELTA-MENDOTA WATER)
AUTHORITY, WESTLANDS WATER)
DISTRICT, CALIFORNIA FARM BUREAU)
FEDERATION AND TED SHEELY,)

Plaintiffs,)

v.)

U.S. DEPARTMENT OF THE INTERIOR;)
DIRK KEMPTHORNE, AS SECRETARY OF)
THE U.S. DEPARTMENT OF THE)
INTERIOR; U.S. FISH AND WILDLIFE)
SERVICE; H. DALE HALL, AS)
DIRECTOR, FISH AND WILDLIFE)
SERVICE, U.S. DEPARTMENT OF THE)
INTERIOR; STEVE THOMPSON, AS)
OPERATIONS MANAGER,)
CALIFORNIA/NEVADA OPERATIONS)
OFFICE, FISH AND WILDLIFE)
SERVICE, PACIFIC REGION, U.S.)
DEPARTMENT OF THE INTERIOR; DAVE)
ALLEN, AS REGIONAL DIRECTOR,)
FISH AND WILDLIFE SERVICE,)
PACIFIC REGION, U.S. DEPARTMENT)
OF THE INTERIOR,)

Defendants.)

NATURAL RESOURCES DEFENSE)
COUNCIL, SACRAMENTO RIVER)
PRESERVATION TRUST, SAVE SAN)
FRANCISCO BAY ASSOCIATION AND)
THE BAY INSTITUTE,)

Defendant-Intervenors.)

1:02-cv-6461 OWW DLB
SCHEDULING CONFERENCE ORDER

I. Date of Scheduling Conference.

August 31, 2006.

II. Appearances Of Counsel.

Daniel O'Hanlon, Esq., appeared telephonically on behalf of San Luis et al., laintiffs.

Gibson, Dunn & Crutcher LLP by Christopher H. Buckley, Jr., Esq., appeared on behalf of Plaintiffs California Farm Bureau.

Brenda Washington Davis, Esq., appeared on behalf of Plaintiffs California Farm Bureau Federation and Ted Sheely.

Ronda Azevedo Lucas, Esq., appeared on behalf of Plaintiffs Ted Sheely and California Farm Bureau Federation.

James A. Maysonett, Esq., Trial Attorney, U.S. Department of Justice, appeared telephonically on behalf of Defendant U.S. Department of the Interior, et al.

James Monroe, Esq., from the Solicitor's Office, U.S. Department of the Interior also appeared telephonically for the Department of the Interior.

Trent W. Orr, Esq., and Andrea A. Treece, Esq., appeared on behalf of Defendant-Intervenor Natural Resources Defense Council.

III. Remand for Explanation Regarding

Matters in the McDonald E-Mail

1. After discussion, the parties have differing views concerning the extent and the substance of the remand for explanation concerning matters in the McDonald e-mail of March 30, 2004.

2. The Administrative Record is remanded back to the Department of the Interior and the Fish and Wildlife Service for the purposes of explaining the contents of the McDonald e-mail.

1 The remand shall address issues concerning the accuracy,
2 completeness, consistency, independence, potential bias, and
3 efficacy of the status review and the underlying data and
4 analysis upon which it was based. This remand shall include
5 communication with Under Secretary McDonald and shall address
6 issues including, but not limited to: (1) accuracy and
7 completeness of information for the Status Review; (2)
8 independence of the peer review process; (3) whether or not
9 flawed assumptions or data were used; (4) the reliability and
10 completeness of Delta Smelt population estimates; and (5) how the
11 various factors within the Delta affect the Delta Smelt
12 population; whether there were "agreements" described by McDonald
13 and, if so the substance and purpose of the agreements.

14 3. By October 30, 2006, Federal Defendants shall
15 supplement the Administrative Record in this matter (and file and
16 serve said supplement on all parties) with (1) the McDonald e-
17 mail; (2) a full, written explanation of the matters raised in
18 the McDonald e-mail and discussed in the immediately preceding
19 section of this order; and (3) any other contemporaneous
20 documents necessary to clarify or otherwise explain the matters
21 raised in the McDonald e-mail.

22 IV. Schedule For Future Briefings

23 1. Plaintiff Farm Bureau shall file any motion challenging
24 the adequacy of the Federal Defendants' completion of this remand
25 and supplementation of the Administrative Record by November 14,
26 2006. If Plaintiff Farm Bureau files such a motion, Federal
27 Defendants and Defendant-Intervenors shall file any opposition by
28 November 28, 2006. Plaintiff Farm Bureau shall file its reply by

December 12, 2006. The hearing on any such motion shall be on January 5, 2007, at 10:00 a.m. in Courtroom 3.

V. Summary Judgment.

1. Plaintiff shall file motions for summary judgment on all claims by December 22, 2006.

2. Federal Defendants and Defendant-Intervenors shall file oppositions thereto and cross-motions for summary judgment by January 26, 2007.

3. Plaintiffs shall file their replies and opposition to Defendants' cross-motions for summary judgment by February 9, 2007.

4. Federal Defendants and Defendant-Intervenors shall file their replies to Plaintiffs' opposition by February 23, 2007.

5. The cross-motions for summary judgment shall be heard on March 23, 2007, at 10:00 a.m., in Courtroom 3. Extended time is reserved for oral argument.

6. The parties understand that depending upon results of the remand that this schedule may have to be modified.

IT IS SO ORDERED.

Dated: September 1, 2006
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/s/ Oliver W. Wanger
UNITED STATES DISTRICT JUDGE